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Oswald Reyes, named as "Justin Reyes,"
Brian Williams, Sr., and Johnny J. Youngblood*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MARTINEZ S. AYTCH,

Plaintiff,

v.

JAMES G. COX, et al.,

Defendants.

Case No. 2:14-cv-00139-GMN-CWH

**DEFENDANTS' MOTION FOR
ENLARGEMENT OF TIME TO COMPLY
WITH COURT ORDER
(ECF. No. 59)**

AND ORDER THEREON

Defendants, Mary Agnes Boni, James "Greg" Cox, Kimberly McCoy, Oswald Reyes, named as "Justin Reyes," Brian Williams, Sr., and Johnny J. Youngblood, by and through counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Micheline N. Fairbank, Senior Deputy Attorney General, hereby move for an enlargement of time to comply with this Court's Order (ECF. No. 59). This motion is based on Federal Rule of Civil Procedure 6(b), the following Memorandum of Points and Authorities, the attached declaration of Dawn Rosenberg, and the papers and pleadings on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. NATURE OF MOTION

Defendants seek a fourteen day extension of time, from June 11, 2015, up to and including, June 25, 2015, to comply with this Court's May 21, 2015, Order granting Plaintiff's Motion for Preliminary Injunction. On May 21, 2015, this Court entered an Order granting

Plaintiff Martinez S. Aytch's ("Plaintiff") Motion for Preliminary Injunction. In granting Plaintiff's Motion for Preliminary Injunction, the Court ordered Defendants to provide Plaintiff with a diet that both complies with the tenants of the Muslim faith and meets Plaintiff's low sodium diet. (ECF No. 59.) The deadline for compliance is June 11, 2015. *Id.* Defendants are diligently working to create a new diet menu that complies with this Court's Order; however, additional time is necessary to finalize the menu, and obtain certification that the diet complies with the tenants of the Muslim faith. The additional fourteen days will permit Defendants to secure religious approval for the menu, order the food items, and ensure that the Ely State Prison ("ESP") culinary can appropriately manage the implementation of the new menu.

II. DISCUSSION

FRCP 6(b) addresses extending time, stating:

(1) In General.

When an act may or must be done within a specified time, the court may, for good cause, extend the time:

- (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or
- (B) on motion made after the time has expired if the party failed to act because of excusable neglect.

In this case, the time to comply with the Court's order has not yet expired. Compliance is presently due on June 11, 2015. This is Defendants' first request for enlargement of time. The Nevada Department of Corrections ("NDOC") has been diligently working to implement a new low-sodium menu that complies with the Muslim faith requirements. (Exhibit A, Declaration of Dawn Jones.) The process has been lengthy as it first required approval from a dietician/nutritionist to ensure it meets the daily caloric, sodium limits and other nutrition requirements. (*Id.*) Next the menu had to be forwarded to ESP Chaplain Rabbi Mallinger for certification that it meets with the tenants of the Muslim faith. (*Id.*) Additionally, NDOC must confirm with Scroll K, the kashrut certifying organization for the NDOC religious diet facilities, that the products meet their requirements and determine if there are any special handling requirements for cooking in the microwave. (*Id.*) Once these final steps are completed,

1 NDOC and ESP need at a minimum one week for the product to be ordered and delivered to
2 ESP. (*Id.*) Expedited orders are not available, as ESP is located in a remote area and
3 vendors will not deliver without a full order. Finally, ESP culinary staff needs time to make
4 several test meals before it goes into production.

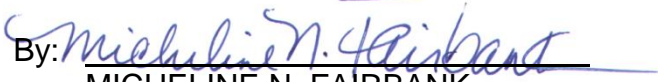
5 Based upon these remaining logistics, Defendants' assert this request for an
6 enlargement of time is necessary, made in good faith, and not for the purpose of delay.
7 Therefore, Defendants respectfully request an extension of time of fourteen days to allow for
8 dietician certification, product delivery to the institution, culinary testing, and Rabbinical
9 oversight.

10 **III. CONCLUSION**

11 Defendants respectfully request that this Court grant an enlargement of time up to, and
12 including, June 25, 2015, to allow Defendants to comply with this Court's Order (ECF. No.
13 59).

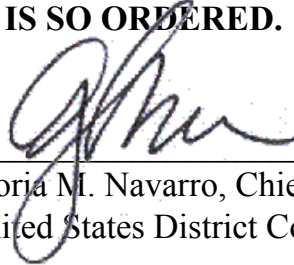
14 DATED this 9th day of June, 2015.

15 ADAM PAUL LAXALT
16 Attorney General

17 By: 
18 MICHELINE N. FAIRBANK
19 Senior Deputy Attorney General
20 Bureau of Litigation
21 Public Safety Division

Attorney for Defendants

22 **IT IS SO ORDERED.**

23 
24 Gloria M. Navarro, Chief Judge
25 United States District Court

26 **DATED: 06/10/2015**

CERTIFICATE OF SERVICE

I certify I am an employee of the Office of the Attorney General, State of Nevada, and that on this 9th day of June, 2015, I have caused to be deposited for mailing a copy of the foregoing **DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME TO COMPLY WITH COURT ORDER (ECF. No. 59)**, addressed as follows:

Martinez Aytch, #54102
Ely State Prison
P.O. Box 1989
Ely, NV 89301

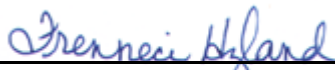

An Employee of the Office of
The Attorney General

EXHIBIT A

EXHIBIT A

DECLARATION OF DAWN ROSENBERG

I, DAWN ROSENBERG, being first duly sworn, under penalty of perjury under the laws of the United States deposes and says.

1. I am employed as the Chief of Purchasing and Inmate Services within the Nevada Department of Corrections (NDOC), having my place of employment in Carson City, Nevada. Inmate Banking Services Division is responsible for the administration of fiscal procedures; to provide for the receipt of all inmate monies, process appropriate deductions from inmate monies, and all other associated inmate-banking services.

2. For Purchasing, I oversee all Department purchases and contracts, including contracts for food and all food purchases as well as work with the NDOC contracted dietician to certify all menus meet or exceed minimum requirements for adult males as specified by the Recommended Daily Allowances (RDA) and the Dietary Reference Intakes (DRIs) as established by the Food and Nutrition Board, Institute of Medicine, National Academies. Therefore, I have personal knowledge of the matters asserted herein and am competent to testify thereto, save for those matters asserted on information and belief, and for those matters, I am informed and believe them to be true.

3. In connection with the filing of this Declaration, I was contacted by the Nevada Attorney General's Office, who, based on information and belief, represents the Defendants in *Aytch v. Cox, et al.*, now proceeding in United States District Court for the District of Nevada as Case Number 2:14-cv-00139-GMN-CWH. It was requested that I provide truthful and accurate information concerning the business records contained in both the Inmate Services Division as well as the Purchasing Division.

4. Pursuant to the Court's Order granting inmate Martinez Aytch's (NDOC No. 54102) Motion for Preliminary Injunction, NDOC has been working to implement a low-sodium common fair diet that is compliant with the requirements of the Muslim faith.

5. I have been working with a dietician to formulate a low sodium menu that meets the daily caloric and nutritional requirements for an adult male inmate. The menu has been submitted to the Chaplain, Rabbi Marc Mallinger, at ESP to obtain approval that it also meets

1 the requirements of the Muslim faith.

2 6. Once the diet has received religious and dietary approval, I need to submit
3 purchase orders to our distributors or manufacturers to have these products delivered to ESP.
4 We will attempt to have them express shipped; however, expedited deliveries to ESP are
5 often difficult as the institution is in a remote location in eastern Nevada.

6 7. After the food products have arrived at ESP, culinary staff will need time to make
7 several test meals before they go into production and are served to Mr. Aytch. Additionally,
8 Scroll K will need to confirm that all new products in the low sodium Common Fare diet meet
9 kosher requirements and to confirm whether there are any special handling or heating
10 instructions for when the items are cooked in the microwave.

11 8. An extension of fourteen days would allow the NDOC sufficient time to complete
12 dietician certification, product delivery, culinary testing, and Rabbinical oversight.

13 FURTHER I declare under penalty of perjury pursuant to 28 U.S.C § 1746 that the
14 foregoing is true and correct.

15 DATED this 9th day of June, 2015.

16 
17 DAWN ROSENBERG